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9 **Attorney for Debtors**

6 **IN THE UNITED STATES BANKRUPTCY COURT**
7 **IN AND FOR THE DISTRICT OF ARIZONA**

8 In re:) Chapter 11 Proceedings
9)
10 RICHARD J. FISCH and) Case No. 2:10-bk-06970-GBN
11 LINDA E. FISCH,)
12 Debtors.) **MOTION TO WITHDRAW FROM**
13) **REPRESENTATION AS LEGAL**
14) **COUNSEL FOR DEBTORS WHOSE**
15) **STATUS AS DEBTORS-IN-POSSESSION**
16) **HAS CEASED**

13 Thomas G. Luikens, who had been appointed counsel for the Debtors-in-Possession
14 Richard J. Fisch and Linda E. Fisch during this Chapter 11 proceeding by Orders dated April 12,
15 2010, and April 29, 2010, files this Motion to Withdraw as Legal Counsel for the Debtors and
16 Debtors-in-Possession, and in support of same, respectfully informs the Court of the following:

17 1. The Debtors Richard J. Fisch and Linda E. Fisch, who are spouses, have been
18 informed that Thomas G. Luikens and Ayers & Brown, P.C., intend to terminate continuing legal
19 representation in the bankruptcy case of the Debtors as soon as this Motion is granted concerning
20 withdrawal of counsel for the Debtors and Debtors-in-Possession.

21 2. In this Chapter 11 proceeding, a trustee was or will be appointed on or after October
22 21, 2010, pursuant to an Order of the U.S. Bankruptcy Court. The appointment of a Chapter 11
23 trustee should coincide with Bankruptcy Court approval for withdrawal of counsel who had been
24 appointed by Order [DE 29] and Order [DE 40] to represent the Debtors-in-Possession as officers
25 of the bankruptcy estate.

26 3. Counsel undersigned was not appointed by the Court to represent a Chapter 11
27 Trustee appointed subsequent to filing the petition for relief; and such Trustee undoubtedly will
28 select separate counsel to represent the Trustee for the duration of a Chapter 11 proceeding.

1 Where the Debtors Richard J. Fisch and Linda E. Fisch's status as Debtors-in-Possession has
2 terminated, their material change of status means that they, as individual Debtors, no longer are
3 officers of the estate who are qualified to employ a professional who is eligible to obtain
4 compensation from the estate pursuant to 11 U.S.C. § 330.

5 4. Counsel undersigned provided legal services in good faith to the Debtors-in-
6 Possession and submitted a first application for interim compensation pursuant to 11 U.S.C. § 329
7 that documented 50.20 hours of legal services from March 15, 2010, until August 30, 2010.

8 5. The Debtors Richard J. Fisch and Linda E. Fisch are not required to express, or are
9 not able to consent, by endorsements on this Motion to Withdraw their consent that counsel may
10 withdraw because the Debtors now lack legal capacity to do acts as Debtors-in-Possession.

11 6. Immediate withdrawal by counsel undersigned from continued professional
12 responsibility for representation after the Debtors Fisch have ceased to be Debtors-in-Possession
13 is consistent with Rule 42, Rules of the Supreme Court of Arizona, Rules of Professional Conduct,
14 E.R. 1.16(a)(1), (b)(1), (b)(6) and (b)(7). No applicable criterion of E.R. 1.16 nor any provision of
15 11 U.S.C. § 330, Local Rule 9010-1, or Local Rule 2083-8 of Rules of Bankruptcy Procedure for
16 the District of Arizona forbids withdrawal under the present circumstances, nor mandates continued
17 representation pro bono after a debtor-in-possession is supplanted by a trustee appointed by the
18 U.S. Bankruptcy Court.

19 7. Continued obligation to furnish legal services to persons who are not Chapter 11
20 debtors-in-possession without provision for just compensation would confer an unjust enrichment
21 to each of the Debtors and would constitute a corresponding material impoverishment of the
22 attorney undersigned.

23 8. This paragraph constitutes the certificate required by Local Rule 9010-1(b) that
24 counsel undersigned has complied with Local Rule 9010-1(b), *supra*, by advising each of the
25 Debtors, whose last known address and telephone number were 8270 N. Hayden Road, #1028,
26 Scottsdale, Arizona 85258, 480-483-6225, about the status of the case, including the dates and
27 times of any court hearings or trial settings and the need to comply with any existing court orders,
28 discovery requests, and the possibility of sanctions for failure to comply, and recommended to each

Debtor to arrange for substitute legal counsel for continued legal representation, if desired, by such Debtors as individuals.

RESPECTFULLY SUBMITTED this 22nd day of October, 2010.

AYERS & BROWN, P.C.

/s/TGL, #004584
Thomas G. Luikens
Attorney for Debtors Fisch

Filed pursuant to ECF requirements and copy of the foregoing mailed this 22nd day of October, 2010, to:

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By /s/ Lynn Duncan

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